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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/062,551	04/20/98	WALKER	K W2450002

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EXAMINER

CHO, D

ART UNIT

PAPER NUMBER

3762

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AIR MAIL

DATE MAILED:

01/04/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/062,551

Applicant(s)
Walker

Examiner
David J. Cho

Group Art Unit
3762



☒ Responsive to communication(s) filed on 12 Oct 1999

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-24 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-7, 9, 14-18, and 22-24 is/are rejected.

☒ Claim(s) 8, 10-13, and 19-21 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by Kerwin et al.
'5,449,009.

Kerwin et al. discloses a fluid collection and disposal system which comprises a collection vessel 20 designed to be cleaned by a servicing unit 11 after use. Figure 2 discloses the vessel comprising a vacuum connection port 23 connected to a source of vacuum and a patient fluid inlet port 24 whereby during servicing of the collection unit 12, the ports 23 and 24 operate as inlet ports for passage of cleaning fluids into the vessel and the port 25 operates an outlet port to allow collected body fluids and subsequent cleaning fluids, to be withdrawn from the vessel by operation of the servicing unit and disposed of properly.

Claim Rejections - 35 USC § 103

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3. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

4. Claims 1-4 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kashmer et al. '4,465,485.

Kashmer discloses a suction canister system comprising a lid 12, which may be removable; an inlet port (29) connected to a tube connector 32 that extends to a source of body fluids; a suction port (22) connected to connector 26, a suction source; and an unitary shut-off valve/filter element (40) that is adapted to terminate suction through the suction opening when liquid rises in the receptacle at a predetermined level. In regards to claim 4, Kashmer et al. discloses the connector 26 may be removed from the suction port, see figure 3. However, Kashmer does not disclose the suction tube extending to the bottom of the canister.

It would have been obvious manner of design choice to modify Kashmer by having the suction port also extend to the bottom, since applicant has not disclosed that having the suction port extend to the bottom solves any stated problem or is for any particular purpose and it

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appears that the suction port would perform equally well in any particular depth. Therefore, it is merely a matter of engineering design choice, and thus does not serve to patentably distinguish over the prior art.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kashmer et al. in view of Blenkush '5,033,777.

Kashmer et al. discloses the invention substantially as claimed except for the outlet port is sealed by a puncturable membrane.

Blenkush teaches a coupling system comprising a male insert member 12 and a female receptacle assembly 14, wherein the male insert is configured for insertion into the female assembly. In addition, Blenkush teaches a cylindrical seal 20 made from resilient material which engages the bore 30 to form a fluid tight seal with the wall of the bore.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the invention of Kashmer et al. with the puncturable membrane as taught by Blenkush in order provide a fluid tight seal.

6. Claim 6 is rejected under 35 U.S.C. § 103 as being unpatentable over Kashmer et al. in view of Beguiristain '3,612,089.

Kashmer et al. discloses the invention substantially as claimed except for the check valve comprising a floatball operably coupled to a needle valve.

Beguiristain teaches a vacuum reactivator for use with an oral evacuator comprising a ball float valve 32 is provided to turn off the vacuum when the liquid in the chamber reaches a

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predetermined depth and a plunger 44 is provided to manually disengage the ball valve from its seat after the chamber has been drained to restore vacuum, see figures 1 and 3. Moreover, it is the examiner's position that the plunger 44 of Beguiristain corresponds to applicant's claimed needle valve.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the invention of Kashmer et al. with the floatball and needle valve as taught by Beguiristain in order to provide better control of the vacuum within the container.

7. Claims 7 and 15-16 are rejected under 35 U.S.C. § 103 as being unpatentable over Kerwin et al. '5,449,009 in view of Leviton '4,384,580.

Kerwin discloses a fluid collection and disposal system which includes a reusable collection unit (12) designed to be cleaned by a servicing unit (11) after use. The collection unit comprises a vessel (20) with a lid (22) including three opening therethrough which extend into the vessel. Port 23 operates as the vacuum connection port to supply a source of suction, port 24 operates as a patient fluid inlet port, and port 25 is in fluid flow connection with the site glass 21. During service of the collection unit, the ports 23 and 24 operate as inlet ports for passage of cleaning fluid into the vessel and the port 25 operates an outlet port to allow collected body fluids and cleaning fluid to be withdrawn from the vessel by operation of the servicing unit. Also included in Kerwin is a disposable manifold 13 that is placed on top of the vessel lid in order to attach the collection unit to a suction source and to collect fluid from a patient. However Kerwin does not disclose the second inlet and outlet port.

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Leviton teaches a fluid flow adapter suitable for use in a fluid collection container includes a first open tube with second and third opened tubes attached thereto. The second and third tubes (20, 22) are in direct fluid communication with the first tube but they are not in direct fluid communication with the each other. This arrangement allows the second and third tubes to serve as fluid inlet and fluid outlet openings for the collection container.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the invention of Kerwin with the second inlet and outlet port as taught by Leviton in order to provide a system though which fluids can be collected serially.

8. Claims 9, 14, 17-18 and 24 are rejected under 35 U.S.C. § 103 as being unpatentable over Kerwin et al. '5,449,009 in view of Leviton and further in view of Griparis '3,833,417.

Kerwin in view of Leviton discloses the invention substantially as claimed. However Kerwin in view of Leviton does not disclose the spraying means.

Griparis teaches an apparatus for spray cleaning the soiled interior surfaces of a tank by applying a burst of cleansing liquid through a sprayer, see figure 4.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the invention of Kerwin in view of Leviton with the spraying means as taught by Griparis in order to minimize the user exposure to potentially dangerous or infectious fluids.

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Response to Arguments

9. Applicant's arguments filed 10/12/99 have been fully considered but they are not persuasive.

In response to applicant's argument that Kerwin's fluid collection and disposal system operates in a fundamentally different way than that of the applicant is found non-persuasive, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. Moreover, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

In response to applicant's argument that Kashmer et al. is not adapted for emptying and cleaning of the canister by a service unit is not commensurate with the scope of the claims. The limitations on which the applicant relies on are not stated in the claims. It is the claims that define the claimed invention, and it is the claims, not the specification that are anticipated or unpatentable. Again, the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus.

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Allowable Subject Matter

10. Claims 8, 10-13 and 19-21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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12. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to David J. Cho, whose telephone number is (703) 308-0073. The Examiner can normally be reached on Monday-Friday from 7:00 am to 4:00 pm.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0858.

David J. Cho

Patent Examiner
December 26, 1999


RONALD STRIGHT
PRIMARY EXAMINER